

April 14, 2004

THE HONORABLE GEOFF SIMPSON
STATE REPRESENTATIVE
16624 SE 254TH PL
COVINGTON WA 98042

Subject: Complaint Filed Against Phil Fortunato, Washington State Republican Party, and
Chad Minnick, PDC Case No. 03-154

Dear Representative Simpson:

The Public Disclosure Commission staff has completed its investigation of your complaint received December 30, 2002 alleging that Phil Fortunato, the Washington State Republican Party (hereafter WSRP), and Chad Minnick sponsored, with actual malice, political advertising that contained false statements of material fact about you when you were a candidate in 2002 for State Representative in the 47th Legislative District.

The PDC staff reviewed your allegations in light of the following statute:

RCW 42.17.530 prohibits a person from sponsoring, with actual malice, political advertising that contains a false statement of material fact about a candidate for public office. "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

You alleged that Chad Minnick, "*on behalf of and with the full knowledge and cooperation of Mr. Fortunato and the WSRP*" registered an internet domain for a website sponsored by the WSRP that contained false information, a violation of RCW 42.17.530. You further alleged that the WSRP sponsored a political advertisement mailer that contained "*essentially the same information as the website.*" Specifically, you alleged that the following statements were false:

1. *Geoff Simpson is lying.*
2. *Geoff Simpson is down in the polls. He knows he is losing this election and he has gotten desperate. In a Machiavellian attempt to keep his power, he is saying anything to get re-elected ... even if that means outright lying.*
3. *Fact: The accusations against Phil Fortunato are false, and Geoff Simpson knows it.*
4. *This week, Geoff Simpson sent out a mailer claiming that Phil Fortunato was involved in some kind of check writing scam.*

We found that:

- Chad Minnick is a graphic designer and printer with whom the WSRP contracted to produce several political advertisements that benefited various 2002 candidates, including Phil Fortunato. The Phil Fortunato campaign also contracted with Mr. Minnick to produce political advertisements.
- Mr. Minnick, along with David Castillo, a consultant to the House Republican Organizational Committee (hereafter HROC), designed the mailer that is the subject of your complaint. Mr. Minnick designed the website. Phil Fortunato provided input into both the mailer and the website.
- Mr. Minnick, on October 29, 2002, invoiced the WSRP \$3,012.13 for 1) designing and printing the mailer and 2) registering the domain name and designing the website. The WSRP paid the invoice on October 31, 2002. Mr. Castillo was paid by HROC who amended its December 10, 2002 C-4 report to reflect a \$110 expenditure to David Castillo for professional services benefiting the Fortunato campaign.
- Mr. Minnick, Mr. Castillo, and the executive director of the WSRP, Peter Abbarno, all assert that WSRP representatives repeatedly asked Mr. Minnick and Mr. Castillo whether they had documentation to support the statements made in the mailer and that Mr. Minnick answered that he and Mr. Fortunato had documentation. Thus, the WSRP acted in good faith when it sponsored what it believed to be a factual mailer.
- Mr. Minnick and Mr. Fortunato did not sponsor the mailer or website.

The PDC staff is unable to determine the validity of the assertions being made in the advertisement regarding the underlying issue, which is whether Phil Fortunato or his former business partner engaged in fraudulent business practices. The statements made in the ad that you allege are false are the subject of a civil lawsuit between Phil Fortunato and his former business partner. Those statements have not been proven to be true or false, and at the time they were made in the ad, it was the belief of the sponsor of the ad that the statements were true. Therefore, we are unable to find evidence that the alleged false statements are false.

Considering the evidence gathered in the subject case and PDC Case Nos. 03-148 and 03-149, PDC staff believes that both parties had a reasonable basis on which to make their statements. Accordingly, there is not clear and convincing evidence that the alleged false statements were false, nor is there evidence that, if the statements were to be proven to be false, the WSRP acted with actual malice when it sponsored the mailer and website. Thus, no enforcement action is warranted.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against Phil Fortunato, the Washington State Republican Party, and Chad Minnick.

Representative Geoff Simpson

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If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll-free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

Enclosure